

Louisiana Law Review

Celebrating 50 Years of Excellence



**Not Endowed by Their Creator: State Mandated Expenses
of Louisiana Parish Governing Bodies**

I. Jackson Burson, Jr.

**A Guide to the Provisions of Chapter Nine of
Louisiana's Commercial Code**

Thomas A. Harrell

Volume 50
March 1990
Number 4

Not Endowed by Their Creator: State Mandated Expenses of Louisiana Parish Governing Bodies

I. Jackson Burson, Jr.*

"... a police jury is a creature of the state and possesses only those powers conferred by the state's constitution and statutes."

Reed v. Washington Parish
Police Jury, 518 So. 2d 1044, 1046
(La. 1988)

I. INTRODUCTION

The economic depression of the late 1980's in Louisiana exacerbated structural-weaknesses in Louisiana government and finance at all levels. Burgeoning deficits led the state government to cut drastically its appropriation to the parish road and bridge fund, which was formerly the main source of funding relied upon by most parishes for construction, repair, and maintenance of their roads and bridges.¹ As money from Baton Rouge diminished, the parishes saw federal revenue sharing funds cut off simultaneously. Beginning with the Nixon presidency, many parishes unfortunately budgeted these non-recurring federal funds for

Copyright 1990, by LOUISIANA LAW REVIEW.

* First Assistant District Attorney, 27th Judicial District Court, Eunice, Louisiana.

1. 1974 La. Acts No. 336 created the Parish Transportation Fund, which is codified at La. R.S. 48:751-755 (1984 and Supp. 1990). La. R.S. 48:753(A)(1) (Supp. 1990) provides that the state appropriations are to be used for work and equipment which "further . . . the parish road system." These funds are statutorily dedicated revenue that cannot be used for payment of any mandated expenses discussed in this article. Between 1984 and 1989, funds appropriated to the Parish Transportation Fund dropped precipitously, as the following chart indicates:

1984-85	\$144,940,145.00	= # 44,940,145
1985-86	\$ 23,518,748.00	
1986-87	\$ 15,276,943.00	
1987-88	\$ 10,955,120.00	
1988-89	\$ 7,740,484.00	

State Treasurer's Office and Police Jury Association of Louisiana. Following social science methodology, many of the budget figures cited in this article were obtained directly from the primary sources either at the parish or state level.

the payment of recurring expenses of vital governmental services including payment of many expenses mandated by state law, which increased dramatically at the same time as federal revenue sharing disappeared.

Concurrent with the cessation of the federal and state largesse, which had become an integral part of their budgets in the 1970's and early 1980's,² most of Louisiana's parish governments³ experienced a decrease in the valuation of real property assessed for *ad valorem* tax purposes. Farm land that sold for \$1,500.00 an acre in 1978 sold for \$600.00 in 1988. Commercial property lost market value precipitously as businesses went bankrupt. Homes, only eighty-five percent of which were subject to *ad valorem* taxation statewide anyway, lost value with stunning swiftness.

The coalescence of all these negative events left many parish governments on the verge of bankruptcy. Headlines revealed parish police juries from such parishes as St. Landry and Tangipahoa⁴ seriously discussing termination of vital services.⁵ The entire road and bridge crew of St. Landry Parish was dismissed in 1988 because there was no money to pay them.⁶

As the parish police juries teetered on the brink of insolvency, many of the parish officials entrusted with the performance of vital judicial,

2. 31 U.S.C. § 6708 (repealed 1986) provided for allocations from the federal treasury to county governments based on criteria of population, amount of taxes paid in the county area and the relative income of the county. This statute was first passed on October 20, 1972, Pub. L. No. 92-512, §§ 108(A),(b)(1), 109(d),(F)(2), 86 Stat. 924, 929-30 (1972), repealed by Act of April 17, 1986, Pub. L. 99-272, Title XIV, § 14001(a)(1), 100 Stat. 327 (1986) (effective on the earlier of the date of adjournment *sine die* of the 99th Congress, or December 31, 1986). See attached Appendix "A" detailing St. Landry Parish Appropriations of 1975-1990, showing the use of Federal Revenue Sharing funds to pay soaring mandated costs, and reduction of police jury revenue as mandated expenses rose.

3. As noted below, there are 15 parishes governed under Home Rule Charter forms of government—usually called Parish Councils—rather than by the statutorily created police jury system. Their problems with mandated expenses are the same as the police jurors' problems. To avoid confusion, the generic terms "parish governing authority," or "parish governing body" will be used to identify both forms of parish government where their situations are identical.

4. Tangipahoa Parish Council official minutes (1988), October 5, 1988, page No. 504, wherein the Council voted to file bankruptcy. Governor Won't Let Parish Proceed With Bankruptcy, Hammond Daily Star, Oct. 11, 1988 at 1; Council Votes to File Bankruptcy, Hammond Daily Star, Oct. 6, 1988 at 1 (Governor Roemer did not approve the application but the lights were out for three days in the courthouse).

5. According to a July 1986 Survey by the Louisiana Police Jury Association, the 60 parishes responding reported losing 16.4% of their employees or a total of 1,351 workers, of whom 60% had been employed in road and bridge maintenance crews. St. Landry and Tensas Parish reported no parish road maintenance employees at all.

6. Official Minutes (1987) of St. Landry Parish Police Jury Special Meeting held on January 14, 1987, Resolution No. 1, at 2.

executive, electoral, and administrative functions found their various sources of revenue deleteriously affected by the general reduction of state support services and the decline of local governmental revenues caused by the general decline of commerce across the state. For instance, as fewer state troopers patrolled Louisiana highways, fewer traffic tickets were given and the criminal court cost funds declined markedly in most parishes. This circumstance deprived district attorneys and the district judges of money they relied upon for performing their functions. Once again the parish police juries were adversely affected because they receive fifty percent of the surplus in the criminal court fund at the end of the fiscal year.⁷

Supplemental pay to parish sheriff's deputies by the State of Louisiana was cut in the state budget at the same time that the rising tide of narcotics-connected crime left most sheriffs understaffed.⁸

Federal courts were limiting jail cell occupancy and requiring improvements to parish jails at the very time that the funds available to pay for such improvements were diminishing.

Increases in crime required more expensive services from parish district attorneys, coroners, sheriffs, clerks of court, and courts.

Not surprisingly, many parish officials who determine their budgets independent of police jury control found it necessary to request increases in the funds that state law mandates parish police juries to provide parish officials at the very time that parish police juries sought to cut back, or at least hold the line, on these expenses. A clash was inevitable and it has occurred.

The courts have thus far steadfastly maintained that parish police juries are obligated to provide the funds mandated by state law to parish officials, district attorneys, and judges. However, the Louisiana Supreme Court, in upholding a district attorney's right to receive mandated costs in the case of *Reed v. Washington Parish Police Jury*,⁹ has made it plain that there is a limit. The police jury's duty to fund statutorily mandated expenses "is limited by the standard of reasonableness."¹⁰ A district attorney's budget request must meet twin criteria to enjoy the status of legally mandated expenses: (1) his budget request "must be legitimate in that it is related to the function of his office," and (2) his budget request "must be qualitatively reasonable."¹¹ Presumably, the same criteria apply to budget requests for mandated expenses made by other parish officials.

7. La. R.S. 15:571.11 (1981).

8. La. R.S. 33:2218.8 (1988).

9. 518 So. 2d 1044 (La. 1988).

10. Id. at 1049.

11. Id.

At the extreme, there lurks in many parishes the specter of another less ephemeral limit than the well-worn standard of "reasonableness." What will happen when there is no money in the bank to pay all of a parish police jury's mandated expenses? Obviously, they will not be paid if the parish checks will not be honored at the bank. Does the limit of "impossibility of performance" now intrude into the governmental debate as it might steal surreptitiously into a desperate law student's answer in a freshman contracts class? One supposes it must.

Given the irrefutable fact that a police jury cannot pay all its mandated expenses if it does not have enough money to pay them, one must then necessarily confront another dilemma. If the police jury can only pay a portion of its mandated expenses, which expenses have preference? Is there a constitutional or statutory justification for declaring, e.g., that the district judges are *primus inter pares* among local officials because they can hold police jurors in contempt for refusing to pay their mandated expenses? Are district judges and district attorneys, as functionaries of the state judicial system enshrined as a co-equal branch with the state executive and legislative branches of government, entitled to receipt of their necessary expenses in preference to other local officials, many of whom are also enshrined in the state constitution? Are some recipients of mandated expenses entitled to primacy over others or should all mandated expenses be reduced *pro rata* to fit the constraints of available funds?

One will search the current Louisiana Constitution, statutes, and jurisprudence in vain for a specific answer to the questions posed above.

It is the purpose of this article:

(1) To delineate the extent of mandated expenses that the parish police jury is obligated to pay under current Louisiana law;

(2) To define the inherent dilemma created by state statutes that mandate police juries on the one hand to pay all expenses requested by another official beyond their control and on the other hand to balance their budgets; and

(3) To suggest some possible approaches to resolving the paradox inherent in placing increased expense burdens upon police juries without providing the fiscal means to meet these additional responsibilities.

II. THE LOUISIANA CONSTITUTION OF 1974: THREE BASIC FORMS FOR PARISH GOVERNMENT—NONE OF WHICH PROVIDED FINAL CONTROL OVER THE PARISH BUDGET TO THE PARISH GOVERNING AUTHORITY

A. Forms of Parish Government

Article VI of the Louisiana Constitution of 1974 authorizes three basic types of parish government. First, a home rule charter form of

parish government is based upon a charter that has been approved by a majority of the parish electors voting in an election called for that purpose. The home rule charter "[s]hall provide the structure and organization, powers, and functions of the [parish] government . . . , which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution."¹² The parishes of Orleans, Jefferson, East Baton Rouge, Lafayette, St. Mary, Iberia, Lafourche, Plaquemines, St. Charles, St. James, St. John, Caddo, Tangipahoa, Terrebonne, and St. Bernard all have home rule charters. St. Tammany Parish approved a home rule charter, but then returned to the police jury system.

Second, a parish government that has no home rule charter "may exercise any power and perform any function necessary, requisite or proper for the management of its affairs, not denied by its charter or by general law, if a majority of the electors voting in an election held for that purpose vote in favor of the proposition that the governing authority may exercise such general powers."¹³ Citizens of the forty-nine parishes that now have statutory forms of parish government, police juries, could elect to grant them home rule powers. No parish electorate has yet chosen this form of government.

Third, a parish government that has no home rule charter and in which a majority of the electorate has failed to approve a grant of general governmental powers has only "the powers authorized by this constitution or by law."¹⁴ The forty-nine parish police juries fit into this third category of statutorily created parish governments.

Section 14 of article VI of the Louisiana Constitution prohibits state legislative increases in expenditures for "wages, hours, working conditions, pension and retirement benefits, vacation or sick leave benefits" for parish employees until such increases "are approved by ordinance enacted by the governing authority" of the parish or "until the legislature appropriates funds for that purpose to 'the parish' and only to the extent and amount that such funds are provided."¹⁵ An exception is made for "laws establishing civil service, minimum wages, working conditions and retirement benefits" for firemen and policemen. Thus, the constitution grants the legislature plenary power over wages and employee benefits of local firemen and policemen.¹⁶

12. La. Const. art. VI, § 5(E).

13. *Id.* at § 7(A).

14. *Id.*

15. *Id.* at § 14.

16. *Spillman v. City of Baton Rouge*, 441 So. 2d 1243 (La. App. 1st Cir. 1983), writ denied, 446 So. 2d 1213 (1984).

Actually the prohibition against legislative increases of parish employee expenses embodied in article VI, section 14 offers the parish government bodies protection that is more apparent than real. Many individuals who receive paychecks from parish funds are not direct employees of the parish governing body *per se*. Instead, they are employees of state or parish officials whose offices are enshrined in the constitution, or they are the constitutional officers themselves. Moreover, section 14 of article VI limits legislative increases of parish expenditures only in the areas of employee emoluments. Neither that section nor any other constitutional provision forbids the legislature to do what it has done time and time again—increase the emoluments due to a host of recipients of funds from the parish treasury ranging from justices of the peace to judges of the district courts.

Unfortunately, the Louisiana Constitution does not vest in any organ of parish government the power to coordinate the requests for expenditures made by the various parish officials so as to insure that the funds requested do not exceed the funds available from the meager revenue sources permitted the parishes by the constitution and state statutes. A perpetual melee among competing parish official fiefdoms for available funds has resulted.

B. *Constitutional Provisions for Parish Government Finance*

1. *Ad Valorem Taxes*

Section 26 of article VI empowers the governing authority of a parish to "levy annually an ad valorem tax for general purpose not to exceed four mills on the dollar of assessed valuation." In Orleans Parish, the limit is seven mills and in Jackson Parish it is five mills.¹⁷ Parish electors can increase this general millage rate by vote.¹⁸ *Ad valorem* taxes for specific purposes are also authorized.¹⁹

If all homes in Louisiana were subject to *ad valorem* taxation, the four mill constitutional *ad valorem* tax would supply a large predictable and consistent basis for parish government financing. However, the constitution establishes a \$75,000.00 homestead exemption,²⁰ which exempts at least eighty-five percent of Louisiana home owners from paying any parish *ad valorem* taxes.

2. *Sales Taxes*

Sales and use taxes may be levied by vote of a majority of parish voters up to a maximum of three percent. However, the three percent

17. La. Const. art. VI, § 26.

18. *Id.* at § 26(A).

19. *Id.*

20. La. Const. art. VII, § 20.

limitation includes all sales taxes levied by municipalities. Because municipalities may levy a sales tax of up to two and a half percent upon approval of the voters,²¹ the availability of this source of revenue to the parish is sharply limited.

3. Occupational License Taxes

The Louisiana Constitution authorized parishes to impose an occupational license tax "not greater than that imposed by the state."²²

4. Prohibition Against Parish Levy of Severance Taxes, Income Taxes, and Motor Fuel Taxes

Article VII, section 4(C) prohibits the enactment of a severance tax, income tax, or tax on motor fuel by a political subdivision.²³

5. Allocation of Severance Taxes and Royalties to Parishes

Article VII, section 4(D) allocates state severance tax to the parishes as follows:

One third of the sulphur severance tax but not to exceed one hundred thousand dollars; one-fifth of the severance tax on all natural resources, other than sulphur or timber, but not to exceed five hundred thousand dollars; and three-fourths of the timber severance tax shall be remitted to the parish in which severance or production occurs.²⁴

6. Allocation of Royalties to Parishes

The Louisiana Constitution provides that:

One tenth of the royalties from mineral leases on state owned land, lake and river beds and other water bottoms belonging to the state or the title to which is in the public for mineral

21. La. R.S. 33:2711 (1988).

22. La. Const. art. VI, § 28. La. R.S. 47:341-363 (Supp. 1990) imposes the state occupational license tax. La. R.S. 47:341 (Supp. 1990) empowers parishes "to impose a license tax on any person conducting any business herein enumerated" provided two-thirds of the elected members of the parochial governing authority approve the imposition.

23. La. Const. art. VII, § 4(C).

24. La. Const. art. VII, § 4(D). La. Const. of 1921, art. 10, § 21 (superceded 1974) had set the maximum limits on severance taxes paid back to the parishes at \$100,000.00 for sulphur and \$200,000.00 for other minerals. La. R.S. 47:631 (1970) enacts the state severance tax at rates established in La. R.S. 47:633 (1970 and Supp. 1990). La. R.S. 47:645 (Supp. 1990) mandates distribution to the parish in accordance with Article VII, § 4 of the Constitution.

development shall be remitted to the governing authority of the parish in which severance or production occurs.²⁵

7. Revenue Sharing Income to Parishes

Under the constitution, a minimum sum of \$90,000,000.00 is "allocated annually from the state general fund to the revenue sharing fund."²⁶ This fund is distributed annually as provided by law to the tax recipient bodies in each parish on a ratio that compares the population and number of homesteads in each parish to those in the state as a whole.²⁷ The revenue sharing reimbursement is designed to offset current *ad valorem* tax losses of the local tax recipient bodies that result from the homestead exemption granted by the constitution.²⁸

In 1985 approximately twenty-four percent of Louisiana's state budget was allocated to local governments via state shared revenues and state aid programs. This compared with a 1985 United States average of thirty-five percent.²⁹ The situation has worsened dramatically since 1985.

C. Parish and/or Judicial District Offices Established by the Constitution

The judicial branch of Louisiana government is established in article V of the constitution, which establishes district courts with "original jurisdiction of all civil and criminal matters."³⁰ Judicial districts existing on the effective date of the constitution are specifically retained. Judicial districts may be created, divided, or merged by law with approval "in a referendum in each district and parish affected."³¹

Each judicial district is constitutionally required to elect a district attorney who "shall have charge of every criminal prosecution by the state in his district" and is "the legal advisor to the grand jury."³² An informed observer may be surprised to learn that justice of the peace courts with powers established by law are also enshrined in the constitution.³³

25. La. Const. art. VII, § 4(E). Specifics regarding distribution are in La. R.S. 30:145 (1989).

26. La. Const. art. 7, § 26(B).

27. *Id.* at § 26(C).

28. *Id.*

29. U.S. Bureau of the Census, *Governmental Finances in 1985*, Series 6F85, *States Finances, 1985*, Table 11, U.S. Government Printing Office (1986).

30. La. Const. art. V, § 16.

31. *Id.*

32. La. Const. art. V, § 26.

33. *Id.* at § 20.

The informed observer would certainly be surprised to learn that the judiciary article provides that each parish shall elect a sheriff,³⁴ a clerk of court,³⁵ and a coroner.³⁶ He would doubtless be even more surprised to learn that the revenue and finance article provides that each parish except Orleans, which elects seven assessors, shall elect a tax assessor.³⁷ Finally, he would be astonished to learn that the elections article provides that the "governing authority of each parish shall appoint a registrar of voters, *whose compensation . . . shall be provided by law.*"³⁸ Thus, the whole panoply of the parish courthouse officialdom enjoys constitutional status.

In no case is the parish governing authority given any voice in determining the salary and emoluments due to the judicial and parish constitutional officials for whom they must provide facilities. The constitution grants no budgetary power to the parish governing authority over the operational expenditures of these constitutional offices.

Finally, the constitution is silent as to how the general fiscal responsibilities of the parish governing authorities are to be reconciled with the constitutional scheme that provides that salaries and emoluments of most parish officers are to be established by state law.

III. MYRIAD LOUISIANA STATUTES MANDATE PAYMENT OF OPERATING EXPENSES FOR A WIDE RANGE OF STATE AND PARISH OFFICIALS BY THE PARISH GOVERNING AUTHORITY WITHOUT PROVIDING SOURCES OF REVENUE TO PAY THE MANDATED EXPENSES

The state legislature has imposed upon the parish governing authorities a plethora of statutory mandates to pay expenses incurred by state and parish officials who are not subject to effective budgetary control by the parish legislative body. Moreover, none of these statutory mandates to pay expenses provide a corresponding source of funds to pay the mandated expenses. Over the years, well organized lobbies of local officials have found it easy to convince the state legislature that their mandated expense allowances should be increased because the legislature did not have to find the revenues to pay the increased expenses it imposed upon parish governments.

To illustrate the magnitude of the problem that has thereby been created for parish governing bodies, it is instructive to consider the mandates in some detail by category:

34. *Id.* at § 27.

35. *Id.* at § 28.

36. *Id.* at § 29.

37. La. Const. art. VII, § 24.

38. La. Const. art. XI, § 5.

A. *Judicial Offices Entitled to Mandated Expenses*

Parish payment of judicial officer's salaries raises serious issues of separation of powers meriting separate treatment below. But mere recitation of the judicial expenses imposed upon parish government by state law illustrates that these costs of performing judicial business, items that one would otherwise suppose were part of the state criminal and civil legal system, are an imposing burden on parish government fiscs.

Governing authorities of the parishes within multiparish juvenile detention districts across the state are required by statute to appropriate annually amounts to support juvenile detention homes.³⁹ They must also pay the following court related costs: jurors and witness fees in all criminal cases,⁴⁰ civil pauper cases,⁴¹ and juvenile cases;⁴² daily attendance fees for the sheriff's deputies who serve as court bailiffs,⁴³ and appearance fees for all police officers called as witnesses in criminal cases;⁴⁴ plus court reporter's salaries and transcript fees.

Parish governments must also pay a fee for attending court to the clerk of court's deputies who serve as minute clerks,⁴⁵ any amount of the clerk of court's minimum salary not covered by the clerk's salary fund,⁴⁶ and "all necessary office furniture, equipment and record books" requested by the clerk.⁴⁷ Each parish government must provide "a suitable building and requisite furniture for the . . . district and circuit courts," as well as offices, furniture, and equipment needed by the clerks, recorders, sheriffs, tax collectors, and assessors.⁴⁸

Expenses of the district attorney's office, as well as mandated portions of the salaries of the district attorney and his assistants, must be paid by the parish governments.⁴⁹ The parish must also pay for expenses of extraditing criminals from other states⁵⁰ and for expenses incurred as a result of the arrest, confinement, maintenance, and prosecution of prisoners.⁵¹

Salaries of justices of the peace and constables—anachronistic offices that serve little or no function in most cases—are set by state statute,

39. La. R.S. 46:1938 (1982).

40. La. R.S. 15:251, 253, and 254 (1981).

41. La. R.S. 13:3661, 3662, and 3671 (Supp. 1990).

42. La. R.S. 13:1585 (1983 and Supp. 1990).

43. La. R.S. 33:1430 (1988).

44. See, e.g., La. R.S. 15:254.4 (1981), which provides \$15.00 per day compensation for off duty law enforcement officers called to testify in the twenty-seventh judicial district.

45. La. R.S. 13:846 (Supp. 1990).

46. La. R.S. 13:782(D) (1983).

47. La. R.S. 13:784(A) (1983).

48. La. R.S. 33:4713 (1988).

49. La. R.S. 16:6 (1982). See *infra* text accompanying notes 153-97.

50. La. Code Crim. P. art. 279.

51. La. R.S. 15:304 (1981).

but must be paid by parish governments,⁵² which realize no revenue whatsoever from the justice of the peace courts.

Because parish governments paid a portion of district judges' salaries until 1976,⁵³ and still pay a portion of city judges' salaries,⁵⁴ beleaguered parish governments must deplete their meager general fund budgets by paying a pro rata share of the monthly judicial retirement benefits of all retired judges who served in judicial office before the Louisiana Constitution of 1974 and 1976 Louisiana Acts No. 518 converted the judges' pension plans from unfunded programs to pensions funded by judicial salaries.⁵⁵

Parish governments have also been victimized by the occasional "special retirement bills" that have rendered most Louisiana governmental retirement funds a shambles by qualifying particular individuals, who would not qualify under the general retirement law to receive retirement benefits, by legislative fiat. For example, in 1974 a law was passed that effectively ordered the St. Landry Parish Police Jury to pay a pension of two-thirds of his monthly salary to a defeated city judge who did not qualify for retirement benefits under either the unfunded judicial retirement plan or the funded judicial pension plan payable through the Louisiana State Employees Retirement System.⁵⁶

B. Coroner's Mandated Expenses

Coroner's fees for viewing bodies, performing autopsies, issuing papers in an interdiction or commitment, investigating, and examining for mental or physical disabilities as well as the coroner's expert fees⁵⁷ must be paid by parish government primarily at rates set by state law.⁵⁸ The parish must also pay expert witness fees to the coroner's deputies or assistants when they testify in their official capacity.⁵⁹

The statute imposing the obligation for payment of the coroner's fees upon parishes or municipalities, depending whether the situs of the

52. La. R.S. 33:1702 (1988).

53. 1976 La. Acts No. 518 (codified as amended at La. R.S. 13:11-30 (1983)). See *State ex rel. Guste v. City of New Orleans*, 363 So. 2d 678, 683-84 (La. 1978).

54. La. R.S. 13:1874-1875 (1983 and Supp. 1990).

55. La. R.S. 13:11-26 (1983 and Supp. 1990). For instance, the St. Landry Parish Police Jury must now pay from the parish general fund the sum of \$385.42 per month for a retired judge of the Opelousas City Court and \$823.82 per month for a retired judge of the Eunice City Court. Source: Letter from Charles Richard, St. Landry Parish Treasurer dated January 4, 1990.

56. 1974 La. Acts No. 305 (codified as amended at La. R.S. 13:8 (1983 and Supp. 1990)).

57. La. R.S. 33:1560 (Supp. 1990).

58. La. R.S. 33:1555-1556 (1988 and Supp. 1990).

59. La. R.S. 33:1561 (Supp. 1990).

coroner's service was inside or outside the municipality,⁶⁰ seems to provide some latitude for local governing bodies by allowing them to set the rates payable within statutory maximum and minimum limits. However, in the recent case of *Reynolds v. City of Pineville*,⁶¹ the court held that the limited rate-setting discretion granted by the statute did not allow a local governing body to escape liability for the coroner's expenses by simply refusing to set the rates to be paid.

C. City Court's Mandated Expenses

Salaries of a city court judge must be paid in equal proportion by the parish and city that are the situs of the court if the population of the jurisdiction is less than 100,000,⁶² but the city pays all the city judge's salary if the population of the jurisdiction is more than 100,000.⁶³ The city court statutes are replete with special mandates for judge's salaries.⁶⁴

City court marshal's salaries are set at a minimum of \$3,600.00 payable in equal proportion by the parish and the city if the population of the jurisdiction is less than 10,000. In larger jurisdictions, the marshal must be paid by the governing bodies of both city and parish in varying amounts⁶⁵ with special statutes making specific salary provisions for particular courts.⁶⁶

Mandatory minimum salaries are also set for the city court clerks and deputy clerks.⁶⁷ The statutes have generally saddled the cities rather than the parishes with the burden of paying city court operating expenses.⁶⁸

D. Election Officials' Mandated Expenses

Parish governing authorities must pay a portion of the salary of the registrar of voters according to a schedule established by statute⁶⁹ and must furnish him with an office either in or in close proximity to the courthouse, as well as all equipment, supplies, furniture, books, stationery, and other expenses for the operation of his office.⁷⁰ Portions

60. La. R.S. 33:1558 (1988).

61. 546 So. 2d 338 (La. App. 3d Cir.), writ denied, 551 So. 2d 631 (1989).

62. La. R.S. 13:1874 (Supp. 1990).

63. La. R.S. 13:1874(B) (1983).

64. La. R.S. 13:1871-2488.78 (1983 and Supp. 1990).

65. La. R.S. 13:1883(C) (1983).

66. La. R.S. 13:1871-2488.78 (1983 and Supp. 1990).

67. La. R.S. 13:1888 (1983).

68. La. R.S. 13:1889-2488.78 (1983 and Supp. 1990).

69. La. R.S. 18:55 (Supp. 1990).

70. La. R.S. 18:132 (1979).

of the salaries of the registrar's chief deputies and confidential assistants must also be paid,⁷¹ plus salaries of such additional temporary personnel as the registrar requires.⁷² The statutes even set the number of permanent employees each registrar is entitled to hire (whose salaries must then be paid at least in part by the parish).⁷³

The parish must pay for all costs of the registrar's annual canvass of one-fourth of the parish voters⁷⁴ and for the registrar's special counsel.⁷⁵ Finally, the parish must pay a per diem to members of the parish Board of Election Supervisors to prepare for and supervise elections.⁷⁶

E. Assessor's Mandated Expenses

The cost of furniture, maps, and supplies needed by the tax assessors are borne proportionately by all taxing bodies in the parish under the traditional *modus operandi* of Louisiana parish government.⁷⁷ These items are purchased by the parish governing body and billed to the other taxing bodies.⁷⁸

The salaries and expense allowances of parish assessors are enumerated in state statutes.⁷⁹ Each taxing body in a parish contributes a pro-rata share to payment of the assessor's salary and expenses in proportion to their percentage of the total *ad valorem* tax collection of the parish. The sheriff remits the amounts due directly to the assessor from the first taxes collected each year.⁸⁰

Some relief from payment of the assessor's office expenses is afforded to the parish governing body in those parishes where the assessor has availed himself of the prerogative to finance his office by means of a millage levied on the assessed valuation of all property on the tax rolls of a statutorily created "Assessment District."⁸¹

F. Obligation to Provide Quarters for Court and Parish Officers, Courthouse, and a Jail

Parish governing bodies must provide "a suitable building" and requisite furniture and equipment for the district and circuit courts, as

71. La. R.S. 18:59(B), (F) (Supp. 1990).

72. La. R.S. 18:59(I) (Supp. 1990).

73. La. R.S. 18:59.2 (Supp. 1990).

74. La. R.S. 18:192 (Supp. 1990).

75. La. R.S. 18:64 (1979).

76. La. R.S. 18:423(E) (Supp. 1990).

77. La. R.S. 33:4713 (1988).

78. *Id.*

79. La. R.S. 47:1907-1911 (Supp. 1990).

80. La. R.S. 47:1906 (Supp. 1990).

81. La. R.S. 47:1925:1 (Supp. 1990).

well as for the clerk of court, the sheriff, and the assessor, plus "necessary heat and illumination" for such quarters.⁸² This mandate does not specifically extend to provision of air-conditioning, which is now the norm for all parish offices. Each parish government is obligated to provide "a good and sufficient courthouse, with rooms for jurors, and a good and sufficient jail."⁸³

G. *Obligation to Provide Care, Feeding, and Transportation of Prisoners*

In 1976, Act 689 created law enforcement districts with boundaries coterminous with the boundaries of each parish, except Orleans, for the purpose of providing financing to parish sheriffs.⁸⁴ An *ad valorem* tax sufficient to produce the same revenue in 1977 that the sheriff's commission on *ad valorem* taxes had produced in 1976 through 1977 was statutorily levied on all property appearing on the tax rolls of each parish from 1977 onward.⁸⁵ All this was done without a vote of the people, the normal *sine qua non* of imposition of an *ad valorem* tax on parish residents, which is an explicit tribute to the political power of the Louisiana sheriffs. With voter approval, a sheriff can obtain additional millages or sales taxes for his law enforcement district.⁸⁶

With an independent financial base, the sheriffs would appear to be in a favorable position to relieve parish governing bodies of some of their mandated obligations. Alas, this has not happened. Instead, in the landmark case of *Amiss v. Dumas*,⁸⁷ the first circuit held that while the sheriff, as warden of the parish jail, has the statutory duty of operating the parish jail and seeing to it that the prisoners are properly cared for, fed, and clothed,⁸⁸ it is the financial obligation of the parish governing body to provide the food, clothing, medical treatment, supplies necessary for routine cleaning and daily maintenance, minor appliances, and even utensils necessary to prepare the prisoners' food.⁸⁹

Parish governments are responsible for the maintenance of all parish jails and must pass regulations for policing and governing those jails.⁹⁰ Minimum state standards of health and decency, as well as prescribed building and maintenance requirements must be met by parish jails.⁹¹

82. La. R.S. 33:4713 (1988).

83. La. R.S. 33:4715 (1988).

84. La. R.S. 33:9001 (Supp. 1990).

85. La. R.S. 33:9003(A) (1988).

86. *Id.*

87. 411 So. 2d 1137 (La. App. 1st Cir.), writ denied, 415 So. 2d 940 (1982).

88. La. R.S. 15:704-705 (1981 and Supp. 1990).

89. *Amiss v. Dumas*, 411 So. 2d at 1141 (citing La. R.S. 15:304 (1981)).

90. La. R.S. 15:702 (1981).

91. La. R.S. 15:751, 763 (1981).

A physician must be appointed to attend sick prisoners and his salary paid by parish governing bodies.⁹² The sheriff is allowed twelve and a half cents per day for each sick prisoner.⁹³

The third circuit court of appeal has held that the police jury—not the sheriff—is responsible for the hospital bills incurred by a prisoner who was severely beaten in the parish jail, even though the prisoner had been sentenced to the Department of Corrections and was neither awaiting trial nor serving a parish jail sentence.⁹⁴

For keeping and feeding parish prisoners in jail, parish governments must compensate the sheriffs not less than \$3.50 *per diem* for each parish prisoner. The Louisiana Department of Corrections pays the sheriff \$18.50 per day for each prisoner who has been convicted of a crime and sentenced to the state penitentiary, but is still held in the parish jail.⁹⁵

Finally, if the sheriff obtains approval of the district judge to keep up to four dogs for chasing fugitives, the sheriff may purchase such dogs at parish expense for up to \$500.00 each plus pay up to \$20.00 per month for each dog's maintenance and training.⁹⁶

H. Mandated Civil Defense Expenses

Civil defense would appear to be an area of unique state responsibility. However, Louisiana parishes and municipalities are directed to establish a local civil defense organization and to employ a director of civil defense who is appointed by the state civil defense director upon recommendation of the parish or municipal governing authority.⁹⁷

Thus, without hyperbole one may conclude that the Louisiana statutes impose upon parish governing bodies mandated obligations: (a) to pay salaries of a host of employees whom they do not employ at pay rates that the governing bodies do not control; (b) to provide quarters and equipment for state officials, such as voter registrars, district attorneys, and judges who should be maintained at state expense; (c) to provide quarters and equipment for parish officers whose offices are established by the state constitution and whose financial resources exceed those of most parish governing bodies; and (d) to feed, clothe, house, and care for everyone from parish grand jurors, petit jurors, and prisoners to the sheriff's bloodhounds.

92. La. R.S. 15:703 (1981).

93. La. R.S. 15:705 (Supp. 1990).

94. *Southwest Louisiana Hosp. Ass'n v. Hunt*, 551 So. 2d 818 (La. App. 3d Cir. 1989).

95. La. R.S. 15:556 and 824 (1981 and Supp. 1990).

96. La. R.S. 33:1438-39 (1988).

97. La. R.S. 29:608 (1989).

XII. THERE IS NO COHERENT STATUTORY SYSTEM PROVIDING FOR IMPOSITION OF MANDATED COSTS ON PARISH GOVERNMENTS IN LOUISIANA, NOR ARE ADEQUATE MEANS PROVIDED FOR PAYMENT OF SUCH COSTS

The melange of statutes that impose mandated expenses on parish governing bodies are difficult to categorize with any rationality. There is no cohesive organization of the mandated expenses within the titles of the statutes dealing with parish government; instead they are scattered willy-nilly throughout the Louisiana Revised Statutes. The various mandatory expense statutes are replete with commands to parish governing authorities to pay expenses over which they enjoy no semblance of normal legislative appropriation control. For example, the parish governing bodies must pay the salaries of court reporters that are set and increased solely by the district judge without approval of the parish governing body. If the same method were employed in the state legislative appropriation process, the court of appeal *judges would decide what their salary will be next year* and compel the legislature to appropriate enough money to pay them.

The language of the statutory mandates is inconsistent and confusing because the verbiage of the commands does not fit any recognizable semantic formula. Worst of all, in many cases the statutes themselves do not establish the amounts of the mandated expenses, but leave them to the unfettered discretion of the local officials who can demand payment from the parish governing body for expenses on a meager or grandiose scale. Thus, expenses for the same office vary wildly from parish to parish. In the case of judicial expenses, such as the salaries of court reporters, they may vary wildly from judge to judge within the same judicial district.³⁴⁰

Some of the statutes are clearly mandatory, saying that the parish "shall" pay a given category of expenditures, while other statutes seem merely directory because they say that the parish governing authority "may" pay given expenses from its general fund. Some mandatory expense statutes employ both the mandatory "shall" and the precatory "may," leading ultimately to confusion over whether the expenses involved are really mandated statutory charges against the parish general fund.

Where disputes between the parish governing body and the official receiving mandated expense allotments have resulted in litigation, the courts have provided some interpretive guidance as to how apparent conflicts in language of a particular statute are to be reconciled. But

340. E.g., in 1988, the 27th judicial district court reporters salaries in four divisions varied from \$25,000.00 per annum in one division to \$35,000.00 per annum in another division.

nowhere in the jurisprudence has there yet been an overall reconciliation of the ranking of the competing statutory expense claims against parish fiscs.

XIII. CONCLUSION

The third circuit in *McCain* groped toward a verbalization of the need for essential reform, but did not quite reach it. The separation of powers doctrine requires the judiciary to receive adequate financing if it is to function as a co-equal branch of state government. To be a co-equal branch of state government, the judiciary must be funded entirely by the state government. Both the constitution and common sense require it. Based on 1988 budgets, full funding of the judiciary by the state government would remove more than \$20,000,000.00 in expenses from the budgets of the beleaguered parish governments. The Tangipahoa Parish judges case presents an opportunity that should not be missed to remove the district courts from the mandated expenses fray by requiring state funding of their operational costs.

The legislature must undertake a wholesale revision of the revised statutes relating to parish government finance to unify all statutes imposing financial burdens upon parish governing bodies. In conjunction with this plan, a constitutional amendment prohibiting the state legislature from imposing financial obligations on local governments without providing a source of funds to pay the mandated costs should be adopted. Further, a coherent body of statutory charges must be coupled with a cohesive plan for parish taxing and licensing power that will raise revenue sufficient to meet those statutory charges. Salaries of district court personnel must be standardized statewide in the same manner that district judges salaries were standardized in 1976.

Only such forceful and dramatic reforms can rescue parish governing bodies from the plight created by excessive mandated expenses and inadequate revenues. Decay of the parish infrastructure of roads and bridges in Louisiana is apparent to even the casual observer. Farm to market roads are crumbling in a state that still relies on agriculture as the base of its rural economy. As of December 31, 1988, there were more than 58,000 miles of roads in Louisiana, of which seventy-two percent were maintained by local government.³⁴¹ Fifty-five percent of those roads, or more than 32,000 miles, must be maintained by parish governments. At its zenith, Rome flourished when its citizenry was provided with a comprehensive network of highways including more than

341. Traffic and Planning Division, Louisiana Department of Transportation and Development, Computer Printout entitled "Road Mileage by Parish," dated December 31, 1988, shows 58,389 total miles of roads in Louisiana, including 9,794.36 miles of city streets and 32,063 miles of parish roads.

fifty-thousand miles of first class roads.³⁴² Roman hegemony faded as its crumbling roads reflected the disarray of its increasingly chaotic government.

Louisiana cannot hope to achieve economic parity with other states—much less preeminence—so long as parish governments are rendered impotent to rebuild a decent system of parish roads and bridges. In the end, revitalization of parish government cannot occur unless and until the problem of mandated costs is solved.³⁴³

342. M. Grant, *History of Rome* 264 (1978).

343. Acknowledgment is made to the special assistance provided in the preparation of this article as researcher, paralegal, and typist by Janice Doucet.